U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 I Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE [redacted] Office: Detroit Date: JAN 24 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Detroit, Michigan, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on August 1, 1969. On April 10, 1984, an immigration judge found the applicant deportable and denied his application for suspension of deportation. Following an appeal of that decision to the United States Court of Appeals for the Sixth Circuit, and an interim review by the Board of Immigration Appeals on June 26, 1987, the applicant was removed from the United States on February 24, 1999. He reentered the United States on April 20, 2001 and was removed a second time on May 5, 2001. Therefore, he is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i). He was present in the United States after his 1999 removal without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). Therefore, the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(C)(i)(II).

The applicant divorced his first wife on August 29, 1988, and married [redacted] a U.S. citizen, on April 4, 1997. He is the beneficiary of an approved Petition for Alien Relative. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii).

In his denial, the district director noted that on May 16, 2000 a Service Agent appeared at the applicant's former place of employment to verify his employment there. The Service Agent was informed that the applicant was in the building. However, after being told that the Agent wished to see him, the applicant could no longer be located. Documentation in the record also shows that the applicant was placed in the custody of the U.S. Border Patrol on May 4, 2001 after serving 10 days in jail for failure to pay child support. Documents relating to that arrest are not present in the record.

The district director determined that the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i) as an alien who reentered the United States after removal, without authorization, and under section 212(a)(9)(C) of the Act, 8 U.S.C. 1182(a)(9)(C), due to his unlawful presence in the United States for a period of more than one year.

On appeal, counsel states that the applicant can demonstrate extreme hardship to his wife and children. Counsel asserts that the applicant's violations were simply to live and be with his family. Counsel states that the applicant has returned to Mexico and will stay there until he is given permission to reapply. He requests 30 days to submit a brief. It has been over two years and no further information has been provided.

It is noted that the appeal was filed in January 2001, prior to the applicant's most recent entry and removal.

Section 212(a)(9)(A) of the Act provides, in part, that:

> (i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
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> (ii) Any alien not described in clause (i) who-
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> > (I) has been ordered removed under section 240 of the Act or any other provision of law, or
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> > (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
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> (iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides that:

> (i) Any alien who-
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> > (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> > (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
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> and who enters or attempts to reenter the United States without being admitted is inadmissible.
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> (ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from

[redacted]

foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and became effective on April 1, 1997. An appeal must be decided according to the law as it exists on the date it is before the appellate body. The provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and who subsequently enter or attempt to reenter the United States without being admitted are inadmissible until they have resided outside the United States for at least 10 years. An alien inadmissible under section 212(a)(9)(C)(i)(II) is permanently inadmissible but may seek consent to reapply for admission after he/she has been outside the United States for 10 years. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry must have occurred on or after April 1, 1997.

The applicant in this matter was removed from the United States on February 24, 1999 and unlawfully reentered on April 20, 2001. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and must remain outside the United States for at least 10 years before the Service will consider his application for permission to reapply. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.